

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

SHAWN DEN D CRAWFORD

Claimant

APPEAL NO: 09A-UI-16180-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACCESS DIRECT TELEMARKETING INC

Employer

OC: 08/16/09

Claimant: Respondent (4/R)

Section 96.5-1 – Voluntary Quit

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer appealed a representative's September 25, 2009 decision (reference 01) that concluded the claimant was qualified to receive benefits and the employer's account was subject to charge because the claimant quit his employment for reasons that qualify him to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 3, 2009. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer file a timely appeal or establish a legal excuse for filing a late appeal?

FINDINGS OF FACT:

The claimant started working for the employer in January 2008. He worked as full time telemarketer. On August 14, 2009, the claimant gave the employer his two weeks' notice. The claimant resigned because he was going to attend school full time and also be involved in the athletic program. The claimant intended to work until August 28, 2009.

On August 17, after the claimant came to work, the employer ended his employment. The employer told him there was no more work for him to do.

The claimant established a claim for benefits during the week of August 16, 2009. On June 25, 2009, the employer's representative sent the Department a change of address for the employer. On September 25, 2009, a representative's decision was mailed to the employer's old address in Florida instead of the new address in Tennessee. The September 25 decision held the claimant qualified to receive benefits.

The record does not indicate when the employer received the September 25 decision. On October 27, 2009, the employer's representative faxed the employer's appeal to the Appeals Section.

The claimant filed for and received benefits since August 30, 2009.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. Iowa Code section 96.6-2. Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979); *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). In this case, the employer's appeal was filed after the October 5 deadline for appealing expired.

The next question is whether the employer had a reasonable opportunity to file an appeal in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record establishes the employer did not have a reasonable opportunity to file a timely appeal.

The employer's failure to file a timely appeal was due to an Agency error. The Agency failed to make the necessary changes to the employer's address of record as the employer's representative requested on June 25, 2009. The record indicates the employer established a legal excuse for filing a late appeal. Under these circumstances 871 IAC 24.35(2) excuses the employer's delay in filing an appeal. Since the employer established a legal excuse for filing a late appeal, the Appeals Section has jurisdiction to make a decision on the merits of the appeal.

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code sections 96.5-1, 2-a.

When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code section 96.6-2. The law presumes a claimant quits without good cause when he leaves employment to go to school. 871 IAC 24.25(26). When a claimant gives the employer advance notice of his resignation which then results in the employer discharging the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation 871 IAC 24.26(38).

Since the employer did not allow the claimant to work until August 28, the effective of the claimant's resignation, the claimant is eligible to receive benefits for the weeks ending August 22 and 29, 2009. As of August 30, 2009, the claimant is disqualified from receiving benefits because he quit his employment for reasons that do not qualify him to receive benefits.

An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment will be remanded to the Claims Section to determine.

DECISION:

The representative's September 25, 2009 decision (reference 01) is modified in the employer's favor. First, the record indicates the employer had a legal excuse for filing a late appeal. The claimant is eligible to receive benefits for the weeks ending August 22 and 29, 2009. As of August 30, 2009, the claimant is not qualified to receive benefits because he voluntarily quit his employment for personal reasons that do not qualify him to receive benefits. The issue of overpayment or waiver of any overpayment is remanded to the Claims section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs